

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE BLANEK and DEPARTMENT OF VETERANS AFFAIRS,
NATIONAL ACQUISITION CENTER, Hines, Ill.

*Docket No. 96-2129; Submitted on the Record;
Issued May 4, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant sustained any hearing loss or tinnitus condition causally related to factors of his federal employment.

On January 12, 1993 appellant, then a 54-year-old medical equipment system specialist, filed a claim for compensation benefits alleging that he sustained ringing in his ears and an ear infection after being exposed to excessive noise in his office on December 23, 1992.¹

In a claim form dated September 15, 1993, appellant alleged that he sustained bilateral tinnitus due to factors of his employment. In various written statements, he alleged that noise studies of his work area were not accurate and that the employing establishment made insufficient investigation of his allegations of excessive noise in the workplace. Appellant also submitted information taken from books and articles regarding heating, ventilation and air conditioning systems, noise technology and medical conditions of the ear.²

In a sound level survey dated November 10, 1992, the chief engineer noted that sound level readings were taken in the room where appellant worked on November 5, 1992 and the sound level ranged from 55 to 59 decibels and he also noted that the Occupational Safety and Health Administration (OSHA) excessive noise level requirement was 85 decibels. The engineer included a diagram and record of sound levels measured in appellant's work area including the sound levels at his work station.

¹ Appellant subsequently alleged that his condition was due to excessive noise exposure from December 22, 1992 through April 9, 1993.

² The Board has held that medical texts and excerpts from publications are of no evidentiary value in establishing the necessary causal relationship between a claimed condition and employment factors because such materials are of general application and are not determinative of whether the specifically claimed condition is related to the particular employment factors alleged by the employee. *Kathleen D. Walker*, 42 ECAB 603, 609-10 (1991).

In a letter dated May 24, 1994, a supervisor referenced the November 10, 1992 engineer's report of sound levels in appellant's work area, stating that the sound level readings were at or below 60 decibels and that appellant's particular work station registered 58 decibels. He noted that an inspection of appellant's work area had been performed by OSHA on December 10, 1992 and that the OSHA report contained no findings of sound level problems.

In a report dated August 4, 1994, Dr. Oscar L. Alonso, a Board-certified otolaryngologist and Office of Workers' Compensation Programs' referral physician, related that he had performed an otolaryngological examination which was normal with the exception that audiogram revealed a moderate sensorineural hearing loss at 4,000 hertz bilaterally. He included a copy of the audiometric test results.

In a memorandum dated August 25, 1994, an Office medical consultant stated that there was insufficient medical or factual evidence to support a diagnosis of a work-related hearing loss.

By decision dated August 31, 1994, the Office denied appellant's claim for compensation benefits.

By decision dated March 9, 1995, an Office hearing representative vacated the Office's August 31, 1994 decision and remanded the case for further development. The hearing representative stated that the Office should inform Dr. Alonso that a sound level survey performed in November 1992 showed no levels in excess of 60 decibels and request that he provide a reasoned opinion as to whether appellant had sustained a hearing loss or any hearing condition causally related to noise exposure at work from December 22, 1992 to April 9, 1993.

By letter dated June 28, 1995 to Dr. Alonso, the Office noted that the evidence of record established that there was no sound level in excess of 60 decibels in appellant's office although appellant claimed to have been exposed to excessive noise from the heating and ventilation and air conditioning system commencing on December 22, 1992. The Office asked Dr. Alonso whether the medical evidence substantiated that appellant had any hearing loss or any hearing condition causally related to exposure to noise at his workplace.

The record shows that the Office did not receive a response from Dr. Alonso.

By letter dated February 8, 1996, the Office referred appellant, along with the medical evidence of record and statement of accepted facts, to Dr. Arthur W. Curtis, a Board-certified otolaryngologist, for an examination and evaluation as to whether he had sustained any employment-related hearing loss or hearing condition. The Office asked Dr. Curtis to review the amended statement of accepted facts, the medical evidence, and his findings on examination and to provide a diagnosis and reasoned medical opinion as to whether appellant had sustained a work-related hearing loss or other hearing condition. The amended statement of accepted facts provided to Dr. Curtis indicated that there was no evidence of record showing sound levels in appellant's work area in excess of 60 decibels.

In a report dated March 11, 1996, Dr. Curtis related that appellant complained of having bilateral tinnitus which he attributed to noisy malfunctioning of a heating duct. He noted that the

statement of accepted facts indicated that appellant had not been exposed to noise levels greater than 60 decibels and that under such conditions hearing loss from acoustic trauma was “nearly impossible,” particularly in the absence of a preexposure normal audiogram. Dr. Curtis stated his opinion that appellant’s high-tone hearing loss and tinnitus were not the result of work-related noise exposure and that the loss might be the result of other noise exposure or heredity.

By decision dated March 26, 1996, the Office denied appellant’s claim for compensation benefits on the grounds that evidence of record failed to establish that he had sustained any hearing loss or medical condition causally related to factors of his employment.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained any hearing loss or other condition causally related to factors of his employment.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.³ The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.⁴ Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁵ must be one of reasonable medical certainty,⁶ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷

In this case, an Office hearing representative vacated the Office’s August 31, 1994 decision denying appellant’s claim for hearing loss and remanded the case for further development. The Office then referred appellant to Dr. Curtis, a Board-certified otolaryngologist and Office referral physician, for an examination and evaluation as to whether appellant had any work-related hearing loss or other hearing condition.

³ See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁴ The Board has held that in certain cases, where the causal connection is so obvious, expert medical testimony may not be necessary; see *Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959). The instant case, however, is not a case of obvious causal connection.

⁵ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁶ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁷ See *James D. Carter*, 43 ECAB 113 (1991); *George A. Ross*, 43 ECAB 346 (1991); *William E. Enright*, 31 ECAB 426, 430 (1980).

In his report dated March 11, 1996, Dr. Curtis related that appellant complained of having bilateral tinnitus which he attributed to noisy malfunctioning of a heating duct. He noted that the statement of accepted facts indicated that appellant had not been exposed to noise levels greater than 60 decibels and that under such conditions hearing loss from acoustic trauma was “nearly impossible,” particularly in the absence of a preexposure normal audiogram. Dr. Curtis stated his opinion that appellant’s high-tone hearing loss and tinnitus were not the result of work-related noise exposure and that the loss might be the result of other noise exposure or heredity. This report does not support appellant’s claim of an employment-related hearing loss and there is no other medical evidence of record which establishes that his claimed hearing loss was causally related to factors of his employment. Therefore, appellant did not meet his burden of proof and the Office properly denied appellant’s claim for compensation benefits.

The March 26, 1996 decision of the Office of Workers’ Compensation Programs is affirmed.

Dated, Washington, D.C.
May 4, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member